LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
FEB 17 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1964.

No. 915

RUTH LOUISE SCOVILE,
Petitioner

vs.

RICHARD WATSON AND LOCAL 7-515,
OIL, CHEMICAL AND ATOMIC WORKERS
INTERNATIONAL UNION, AFL-CIO.
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

JAMES W. OBERFELL,
Suite 600, 224 West Jefferson Blvd.
South Bend, Indiana
Counsel for Petitioner.

INDEX

Page

OPINIONS BELOW 2

JURISDICTION 2

QUESTIONS PRESENTED 2

STATUTES INVOLVED 2

STATEMENT OF CASE 3

REASONS FOR GRANTING THE WRIT 5

CONCLUSION 7

APPENDIX A — JUDGMENT BELOW 8

CITATIONS

CASES: Page

Conley v. Gibson,
355 U.S. 41, 78 S. Ct. 99 (1957); 7

Salzhandler v. Caputo,
316 F (2d) 445 (2nd Cir. 1963),
cert. den. 375 U.S. 946; 5

United States v. Roganvich,
318 F (2d) 167 (1963), cer. den. 375 U.S. 911. .... 6, 14

STATUTES:

Act of Congress, September 14, 1959, 73 Stat. 519. .. 2

IN THE

Supreme Court of the United States

October Term, 1964.

NO.

RUTH LOUISE SCOVILE,
Petitioner

vs.

RICHARD WATSON AND LOCAL 7-515,
OIL, CHEMICAL AND ATOMIC WORKERS
INTERNATIONAL UNION, AFL-CIO,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered in the above entitled case on November 20, 1964.

OPINIONS BELOW

The judgment of dismissal of the District Court is unreported and is printed in the record for the use of the Court below (Plaintiff-Appellant Appendix 8-13). The opinion of the Circuit Court of Appeals, printed in Appendix A hereto, infra, p. i, is reported in 338 F. (2d) 678.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on November 20, 1964. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1).

QUESTIONS PRESENTED

1. Is it appropriate for this Court to express its interpretation of those Sections of Title I of the Landrum-Griffin Act which are concerned with the individual union member's right to freedom of expression and freedom from unjust disciplinary action?
2. When an action is instituted under Title I of the Landrum-Griffin Act, is it necessary that the individual union member allege in his or her complaint more facts than required in complaints in other federal proceedings so as to defeat a motion for dismissal?
3. Has the Petitioner alleged sufficient facts in support of her claim to entitle her to relief?

STATUTES INVOLVED

The statutory provisions involved are those under the Act of Congress, September 14, 1959, 73 Stat. 519, Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C.A. Sec. 401, et seq.), popularly known as Title I or the "Bill of Rights" Section of the Landrum-Griffin Act and more particularly described as follows:

> "Every member of any labor organization shall have the right to meet and assemble freely with other mem-

bers; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings; **PROVIDED**, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations." (§411 (a) (2)).

"No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing." (§411 (a) (5)).

"The Congress further finds, from recent investigations in the labor and management fields, that there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives." (§401 (b)).

STATEMENT OF THE CASE

Petitioner commenced her action for damages against her Local Union President and the Local Union on the 23rd day of January, 1963. An amended complaint was filed with the District Court on the 3rd day of May, 1963.

and each of the Respondents filed motions to dismiss, which, after oral argument, were granted on the 17th day of January, 1964. The jurisdiction of the District Court was invoked as the case arose under the Act of Congress, September 14, 1959, 73 Stat. 519, Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C.A., Sec. 401 et seq.) and particularly the following Section:

> "Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred or where the principal office of such labor organization is located. Pub. L. 86-257, Title I, §102, Sept. 14, 1959, 73 Stat. 523."

Upon appeal to the court below, the judgment of dismissal was affirmed, one Judge dissenting with opinion (Appendix A).

Petitioner's amended complaint (Plaintiff-Appellant Appendix pp 1-4) alleges her membership in the Local Union; disagreement existing between Petitioner and the Local President on union policy; actions taken by the Local President to pass a disciplinary motion against Petitioner at a special meeting while she was confined in a hospital, which action was illegal under the Union Constitution and By-Laws as well as under Sec. 411 (a) (5) of the Act; the loss of her employment as a result of the disciplinary action; the denial of Petitioner's privilege of speaking at a subsequent regular union meeting, contrary to the Union Rules of Order, By-Laws, and Sec. 411 (a) (2) of the Act, and her exhaustion of all internal union remedies.

REASONS FOR GRANTING THE WRIT

1. As is stated by Judge Schnackenberg in his dissenting opinion: "This case is important not only to this woman but to union members generally." It was clearly the intent of Congress in enacting the Landrum-Griffin Bill to correct certain abuses of power by Union Officials, including the disciplining of a member without a fair hearing and the denial of freedom of speech to a member in his union hall. Our federal judiciary was requested to safeguard these individual rights. If guidelines of interpretation are established at this time, these will assist subsequent judicial determinations and more importantly will indicate that individual union members rights are to be protected, thereby precluding abuses of power and the institution of legal actions in the first instance.

2. The majority opinion of the Court below fails to give effect to the "freedom of speech provision" (§411 (a) (2)), of the Act and is in conflict with the principles as set forth in **Salzhandler v. Caputo**, 316 F (2d) 445 (2nd Cir. 1963), cert. den. 375 U.S. 946, 84 S. Ct. 344. Petitioner's amended complaint (Plaintiff-Appellant Appendix p. 4, Par. 14) alleges that while she "had the floor" and was attempting to make a motion, she was allowed to be interrupted by a motion for adjournment, contrary to the Rules of Order and By-Laws of the Local. The Court below has changed the clear language of the Act and the interpretation of the **Salzhandler** case to require an express affirmative pleading that Petitioner "was in order" and that the motion was "proper for consideration at that time." The Act states that the member shall have the right of expression, subject to the organization's established and reasonable rules.

3. The majority opinion of the Court below as it relates to the interpretation of the freedom of speech provision (§411 (a) (2)) conflicts with its previous decision in **United States v. Roganvich,** 318 F. (2d) 167 (1963), cer. den. 375 U.S. 911.

> "The language of § 411 (a) (2) is clear and unambiguous. It gives 'every member' a 'right * * * to express * * * his views' respecting 'any business properly before the meeting.' None of the stated limitations (provisions for reasonable rules governing meetings, responsibility of members to the union, or interference with performance of the union's legal or contractual obligations) affect the question before us."

4. A different standard of pleading has been expressly stated by the Court below for claims arising under Title I of the Act.

It may be argued that only general allegations are required to state a claim for relief under the statute and that the allegations made by plaintiff were sufficient and that a trial on the merits would provide a more satisfactory disposition of the issues. We believe, however, that claims under Title I of the Labor-Management Reporting and Disclosure Act must be stated with much greater specificity than alleged by the plaintiff in this action and that if claims are not so specific as to show a clear infringement, the complaint is defective. Policy reasons dictate that such specificity be required. Otherwise, unions might well be beset by frivolous law suits initiated by dissident members or those dissatisfied with actions taken by a majority of the union. Labor union organizational stability and democratic action within a union would likely be endangered unless allegations of a specific and substantial character are required in order to state claims for relief under the act.

If our federal practice and procedure is to be differently applied in "Title I" cases and if the rule of **Conley v. Gibson,** 355 U.S. 41, 78 S. Ct. 99 (1957) is not applicable in such cases it is imperative that attorneys be so advised.

CONCLUSION

For the foregoing reasons this petition for writ of certiorari should be granted.

Respectfully submitted,

JAMES W. OBERFELL
Attorney for Petitioner

Suite 600, 224 West Jefferson Blvd.
South Bend, Indiana 46601

APPENDIX "A"

November 20, 1964

Before Hastings, Chief Judge, Schnackenberg, and Swygert, Circuit Judges.

Swygert, Circuit Judge. Questions concerning the interpretation of sections 101(a)(2) and 101 (a)(5) of the Labor-Management Reporting and Disclosure Act of 1959 (Landrum-Griffin), 29 U.S.C. §§ 411(a)(1), 411(a)(5), are presented in this appeal. Charging violations of these sections, plaintiff Ruth Louise Scovile brought an action for damages against Local 7-515, Oil, Chemical and Atomic Workers International Union, AFL-CIO, and the local's president, Richard Watson. The district court granted defendants' motions to dismiss the complaint. Plaintiff appeals from the judgment of dismissal.

A summary of the allegations in the amended complaint follows. There existed between Whitehall Laboratories, Inc. of Elkhart, Indiana, and Local 7-515 a collective bargaining agreement which contained a grievance procedure for the settlement of disputes; plaintiff was a member in good standing of the local and was employed by the Whitehall Laboratories; from May 25, 1962, until June 11, 1962, she incurred certain medically excused absences from work; at a regular monthly meeting of the local on May 19, 1962, Watson, the local's president, and plaintiff had a verbal disagreement over union affairs and Watson, "with knowledge of plaintiff's previous medically excused absences" and for the purpose of injuring her union membership rights and employment security, announced that the union was not going to stand behind any member with an excessive absence record; at a special meeting of the local, held on June 2, 1962, called for the purpose of considering "job

security," Watson urged the passage of a motion to deny to a member arbitration rights under the collective bargaining contract if the employee's record indicated "excessive absenteeism"; Watson's purpose in suggesting the motion was to discipline plaintiff, although he knew the motion violated the local's by-laws and constitution; upon plaintiff's return to work on June 11, 1962, the employer, with knowledge that the local would not assist her by invoking the arbitration procedure, discharged her for "excessive absenteeism"; the local refused to represent her and protect her rights as a member of the union; the action of defendants in respect to the motion of June 2, 1962, was in violation of section 101(a)(5) of the act because plaintiff was not served with a copy of written specific charges against her, nor given a reasonable time to prepare her defense, nor afforded a full and fair hearing; at a union meeting on August 18, 1962, plaintiff attempted to make a motion to have her rights of arbitration reinstated; while she was on the floor, Watson "allowed the Plaintiff to be interrupted and entertained a motion to adjourn" which motion was carried; this action violated the local's by-laws and also section 101(a)(2) of the act; by reason of the actions of the local and its president, plaintiff has been damaged in the amount of $25,000.

I.

The first question is whether plaintiff's complaint is sufficient to allege a violation of section 101(a)(5) of the act.[1] Plaintiff claims that the motion passed by the local

[1] Section 101(a)(5) reads:

No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

at its meeting on June 2, 1962, constituted disciplinary action against her within the meaning of this section.

Defendants contend that under the collective bargaining agreement between the local and Whitehall Laboratories the union, rather than the aggrieved employee, had the right to proceed or not to proceed to arbitration; and further that plaintiff's rights, if any, to require the union to demand arbitration over her discharge were not secured by her union membership but were derived from the collective bargaining agreement. In support of this argument, defendants cite **Allen v. Armored Car Chauffeurs & Guards,** 185 F. Supp. 492 (D.C.N.J. 1960). We do not adopt this reasoning. Although a right such as plaintiff asserts may be derivative, a refusal by the union under circumstances different from those alleged here to prosecute an arbitrable grievance might be considered as a disciplinary measure relating to the employee's membership in the union. Accordingly, we rest our decision on what seems to us a more plausible reason hereinafter delineated.

The allegations of the complaint make it clear that the action taken by the union was prospective and applied to the entire membership and not to plaintiff alone. It can hardly be said that "discipline" within the meaning of the statute includes action that may be taken, or rather withheld, by the union as a matter of policy. In this respect, it should be noted that at the time of plaintiff's discharge the motion had been adopted and was applicable to all members of the local including plaintiff.

II.

The second issue arises from plaintiff's claim that she was deprived of her right to present a motion at the union meeting on August 18, 1962. Although freedom of speech

is a union member's right that is protected by section 101(a)(2) of the act, the exercise of the right at union meetings must accommodate itself to the union's correlative right to conduct its meetings in an orderly fashion and in accordance with its previously established rules. The statute itself places these conditions upon the right of a member.[2] In the instant case plaintiff has failed to allege that the motion to reconsider the union's failure to arbitrate her discharge was in order and proper for consideration at that time.

It may be argued that only general allegations are required to state a claim for relief under the statute and that the allegations made by plaintiff were sufficient and that a trial on the merits would provide a more satisfactory disposition of the issues. We believe, however, that claims under Title I of the Labor-Management Reporting and Disclosure Act must be stated with much greater specificity than alleged by the plaintiff in this action and that if claims are not so specific as to show a clear infringement, the complaint is defective. Policy reasons dictate that such specificity be required. Otherwise, unions might well be beset by frivolous law suits initiated by dissident members or those dissatisfied with actions taken by a majority of the union. Labor union organizational stability and democratic action within a union would likely be endangered unless allegations of a specific and substantial character are required in order to state claims for relief under the act.

---

[2] Section 101(a)(2) reads in pertinent part:

Every member of any labor organization shall have the right . . . to express at meetings of the labor organization his views, . . . upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings. . . .

The judgment of dismissal is affirmed.

Schnackenberg, Circuit Judge, dissenting.

Ruth Scovile is a unique victim of injustice at the hands of President Watson of the local of which she is a member.

Chronologically it appears that on May 19, 1962, at the regular monthly meeting of the local she and Watson disagreed over the removal of a steward from the second shift, whereupon Watson, knowing that her prior absences from work were medically-excused, irrelevantly announced that the union was not going to stand behind any member with an excessive absence record. The record does not show that the union then took any action supporting his statement. Stricken physically, she was confined to a hospital for a condition, stated in oral argument, to be, peculiar to womanhood. This was a medically-excused absence from work which continued from May 25 to June 11, 1962. The prestige and power of Watson were then set in motion against her. He gave as a reason that her hospital confinement constituted "an excessive absence record." While she was in the hospital, he called a special union meeting on June 2, 1962 and there secured the passage of a motion to deny a member arbitration rights if the records of the company indicated excessive absenteeism, despite the fact that a medically-excused absence did not constitute "excessive absenteeism" as defined in the collective bargaining agreement between the union and plaintiff's employer. This action was in violation of the constitution and bylaws of the union. Job security was not on the agenda for the meeting, although the notice posted stated that the subject of the meeting was "job security." No specific written charges were served on plaintiff at or prior to the meeting of June 2, 1962, and she was given no time to prepare a defense or afforded a

full and fair hearing, contrary to the terms of 29 U.S.C.A. § 411 (a) (5).

Consequently when plaintiff returned to work on June 11, 1962, her employer, with knowledge of said disciplinary action by Watson and the union, depriving her of assistance or protection by the use of arbitration procedure, discharged her for the alleged reason of "excessive absenteeism," and defendants have failed and refused to represent and protect her rights as a member of the union.

At the regular meeting of the union held on August 18, 1962, plaintiff was present and attempted to make a motion to have her rights of arbitration reinstated. While she had the floor, Watson allowed her to be interrupted and then entertained a motion to adjourn, which was then carried, contrary to the rules 8 and 28 of their bylaws, and in violation of 29 U.S.C.A. § 411 (a) (2).

She has exhausted all of her internal union remedies and, due to the action of defendants, she has been without employment since the date of her discharge on June 11, 1962. Wherefore she has sued the union and Watson for damages. This case is important not only to this woman but to union members generally. Neither a presiding officer of a union at a union meeting nor the union itself may pursue a course of disciplinary action against any union member in such a manner as to deprive him or her of the freedom of speech protected by the first amendment of the federal constitution and recognized by § 411 (a) (2) and (5) of the act. This deprivation of her right was the culmination of Watson's calculated conduct which ruthlessly employed the naked power of a presiding officer to stifle the voice of a member who was entitled to the support of her union in her misfortune rather than suspension of rights and public ridicule.

In **United States v. Roganovich**, 318 F. 2d 167 (1963), at 170, this court by Judge Knoch said:

> "The language of § 411 (a) (2) is clear and unambiguous. It gives 'every member' a right * * * to express * * * his views' respecting 'any business properly before the meeting.' None of the stated limitations (provisions for reasonable rules governing meetings, responsibility of members to the union, or interference with performance of the union's legal or contractual obligations) affect the question before us.
>
> "* * * We conclude that Congress was seeking to preserve for union members the right of free expression from **any person**, not merely from union agents or those acting on behalf of, or in concert with, them. * * *"

I would reverse the order of the district court dismissing the complaint and remand for further proceedings consistent with these views.

A true Copy:

Teste:

.....

Clerk of the United States Court of Appeals for the Seventh Circuit.

BRIEF IN OPPOSITION TO THE PETITION

Office-Supreme Court, U.S.
FILED
MAR 17 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 915

RUTH LOUISE SCOVILE,

Petitioner,

vs.

RICHARD WATSON AND LOCAL 7-515, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

EUGENE COTTON,
RICHARD F. WATT,
STEPHEN M. SLAVIN,
Attorneys for Respondents.

COTTON, WATT, ROCKLER & JONES,
105 West Adams Street,
Chicago, Illinois 60603.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO 56

INDEX.

PAGE

Question Presented 2

Statement of the Case 2

Argument 5

I. The Amended Complaint fails to state a claim under the Labor Management Reporting and Disclosure Act of 1959 and was properly dismissed. 5

II. There is no conflict between this decision and those cited in the Petition 8

Conclusion 10

CITATIONS.

Allen v. Armored Car Chauffeurs & Guards, Local 820, 185 F. Supp. 492 (D. N. J. 1960) 8, 9

Salzhandler v. Caputo, 316 F. 2d 445 (C. A. 2nd 1963), cert. den. 375 U. S. 946 (1963) 8

Strauss v. International Brotherhood of Teamsters, 179 F. Supp. 297, 300 (E. D. Pa. 1959) 6

United States v. Roganovich, 318 F. 2d 167 (C. A. 7th 1963) 8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 915.

RUTH LOUISE SCOVILE,

Petitioner.

vs.

RICHARD WATSON AND LOCAL 7-515, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Respondents, Local 7-515, Oil, Chemical and Atomic Workers International Union, AFL-CIO, and Richard Watson, President of the Local, oppose the granting of the Petition for a Writ of Certiorari in this cause.

In Respondents' view, the decision of the Court of Appeals for the Seventh Circuit affirming the dismissal of Petitioner's Amended Complaint is correct. Further, it does not appear that there is any conflict between Circuit Courts of Appeal or between the decision below and any other relevant authority.

QUESTION PRESENTED.

Whether the Amended Complaint alleges facts sufficient to state a cause of action under the Labor Management Reporting and Disclosure Act of 1959.

STATEMENT OF THE CASE.

Respondents do not disagree with the "Statement of the Case" set forth in the Petition, so far as it goes. Since the Court of Appeals for the Seventh Circuit, in affirming the dismissal of the suit by the District Court, relied to a large extent on the insufficiency of the Amended Complaint, Respondents believe, however, that a more complete statement is in order.

In her Amended Complaint, Petitioner alleges that at all relevant times she was a member in good standing of Local 7-515. The Local, a voluntary labor organization, is the collective bargaining representative of the employees of Whitehall Laboratories, Inc., in Elkhart, Indiana, of which Petitioner was an employee until June 11, 1962. The individual Respondent, Richard Watson, is the President of Local 7-515 (App. 1-2).*

Petitioner alleges that, during the course of her employment, she incurred certain medically-excused absences and was thus absent from May 25, 1962 to June 11, 1962 (App. 2). On May 19, 1962, there was a meeting of the Local at which Petitioner and Watson had a verbal disagreement. In consequence, Watson, knowing of Petitioner's previous medically-excused absences, and for the purpose of injuring her rights as a member of the Union and her employment security, announced that the Union would not stand behind any member with an excessive absence record (App. 2).

*References are to the Plaintiff-Appellant's Appendix in the Court of Appeals.

Thereafter, Watson called a special meeting for June 2, 1962 and posted a notice indicating that the subject of the meeting would be job security. He allegedly did so with knowledge that Petitioner's medically-excused absences did not constitute "excessive absenteeism" as defined in the collective bargaining agreement (App. 2).

The Amended Complaint alleges that at the special meeting of June 2, 1962, the subject of job security was not part of the agenda; instead, Watson discussed the employer's insurance plan for employees and its cost in relation to the amount paid to employees absent from work (App. 2-3). Respondent Watson, for the purpose of disciplining Petitioner and in furtherance of his May 19, 1962 announcement, urged passage of a motion to deny any member arbitration rights if the records of the company indicated "excessive absenteeism". Such a motion was made and adopted (App. 3). Petitioner alleges that Watson knew that this motion was illegal as in violation of certain provisions of the Union Constitution and By-Laws, and that he intended the motion to be disciplinary action against Petitioner (App. 3).

It is further alleged that these actions of Watson and Local 7-515, at the meeting of June 2, 1962, were taken without serving Petitioner with written specific charges, without giving her a reasonable time to prepare a defense, and without affording her a full and fair hearing, all in violation of the terms of Section 101 (a)(5) of the Labor Management Reporting and Disclosure Act of 1959 (29 U. S. C. § 411 (a)(5)) (App. 3).

At a regular meeting of Local 7-515 on August 15, 1962, Petitioner alleges that she attempted to make a motion to have her arbitration rights reinstated and, while she had the floor, Respondent Watson allowed her to be interrupted and entertained a motion to adjourn, which was carried,

contrary to the rules of order and the By-Laws of the Local and in violation of Section 101 (a)(2) of the Act (29 U. S. C. § 411 (a)(2)) (App. 4).

Petitioner asserts that she has exhausted all her internal union remedies, and that, by reason of the Respondent's improper actions, she has had no employment since her discharge on June 11, 1962, has been unable to secure employment, and has suffered and will continue to suffer damages in the amount of $25,000 (App. 4).

Respondents filed motions to dismiss on the grounds that the Amended Complaint failed to state a claim under the Labor Management Reporting and Disclosure Act of 1959 by reason of the following: (1) the motion adopted at the Union meeting of June 2, 1962, to deny to a member arbitration rights in the event of excessive absenteeism, is not and was not discipline or disciplinary action within the meaning of Section 101 (a)(5) of the Act; (2) there were no facts indicating a violation of Section 101 (a)(2) of the Act, since there were no allegations showing that Plaintiff was denied the right "to express any views, arguments, or opinions . . . or to express . . . views . . . upon any business properly before the meeting. . . ." (App. 7.)

The District Court granted the motions and dismissed the cause (App. 8-13).

ARGUMENT.

1.

THE AMENDED COMPLAINT FAILS TO STATE A CLAIM UNDER THE LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959 AND WAS PROPERLY DISMISSED.

1. Petitioner first alleges that she was "disciplined" by the Local and its President without the procedural safeguards specified in Section 101 (a)(5) of the Act (29 U. S. C. § 411 (a)(5)). To argue that discipline without these safeguards violates the Act is to put the cart before the horse. It must first be shown that the member was "disciplined".

Admitting the truth of all matters well pleaded in the Amended Complaint, of what "discipline" does the Petitioner complain? She alleges that on June 2, 1962, at a special meeting of the Local, President Watson called for the adoption of a motion which would deny *any* member arbitration rights in cases of discharge for "excessive absenteeism". Plaintiff states, in other words, that the membership of the Local voted that, *in the future*, grievances arising from discharges for excessive absenteeism would not be arbitrated.

A policy of not arbitrating certain kinds of grievances, adopted by vote of the Local in open meeting and equally applicable to all members of the Local and relating only to future discharges, can hardly be said to be "discipline". Such is not the ordinary meaning attributed to the word, nor does it appear to be the meaning which Congress intended in enacting the "Bill of Rights" provisions. As stated by the Court of Appeals:

The allegations of the complaint make it clear that the action taken by the union was prospective and applied to the entire membership and not to plaintiff alone. It can hardly be said that "discipline" within the meaning of the statute includes action that may be taken, or rather withheld, by the union as a matter of policy.

2. The rights protected by Section 101 (a)(5), and by all of Title I, are members' rights of "*membership in general* and their relationship, *as members*, with their union." *Strauss* v. *International Brotherhood of Teamsters*, 179 F. Supp. 297, 300 (E. D. Pa. 1959). The disciplinary action referred to in Section 101 (a)(5) is punishment for an offense against the union, where the punishment affects *the member's status as a member.*

Nowhere does the Amended Complaint allege that Petitioner was in any manner disciplined or deprived of her rights as a union member. The sole substantial allegation is that the Local adopted a general policy of refusing to arbitrate certain grievances.

3. The Amended Complaint also seeks relief under Section 101 (a)(2) of the Act for the purported deprivation of Petitioner's right to speak at a Union meeting on August 18, 1962. The Amended Complaint, however, contains no allegation that Petitioner was denied the right to express her "views, arguments, or opinions" or her views "upon any business properly before the meeting. . . ."

Even if it be assumed, *arguendo*, that the action of President Watson in entertaining a motion to adjourn while Petitioner had the floor was in violation of the rules of order and the By-Laws of the Local, it is a big leap from that assumption to the conclusion that Section 101 (a)(2) of the Act was violated and that Local 7-515 and Watson are liable in damages.

The theory of the Amended Complaint in this regard ignores the qualifying language of Section 101 (a)(2), which recognizes the right of a member freely to speak his mind "*subject to* the organization's established and reasonable rules pertaining to the conduct of the meeting". The District Court and the Court of Appeals, recognizing the substantial defects in the theory of the Amended Complaint, declined to rule that the Act was intended to give every member of a local union access to the Federal courts for the purpose of enforcing Robert's Rules of Order.

The legislative purpose behind the Act was to preserve and protect the right of dissent. Nowhere does the Plaintiff allege that she was unable to "express any views, arguments, or opinions" or that she was penalized for so doing.

4. Petitioner argues that the majority opinion of the Court of Appeals imposes an unprecedented standard of pleading for claims arising under Title I of the Act. Petitioner misconceives the Court's holding. The actual language of the Court is that "claims under Title I of the Labor-Management Reporting and Disclosure Act must be stated with much greater specificity *than alleged by the plaintiff in this action. . . .*" (Emphasis added.) Thus, as indicated by the Court's language, as well as its reasoning, the Amended Complaint was dismissed for insufficiency in pleading, i.e., for failure to state a cause of action. No radical innovations in pleading were introduced by the Court of Appeals.

II.

THERE IS NO CONFLICT BETWEEN THIS DECISION AND THOSE CITED IN THE PETITION.

Petitioner argues that her Petition should be granted in order to permit this Court to resolve a purported conflict between Circuits. Neither case cited by Petitioner presents a conflict.

Salzhandler v. *Caputo*, 316 F. 2d 445 (C. A. 2nd 1963), cert. den. 375 U. S. 946 (1963), upholds a union member's right to speak his mind about the union's officers, regardless of whether what he says is true or false, and to be free from disciplinary action for so speaking. It must be emphasized, as it was by Chief Judge Lumbard of the Second Circuit, that the "discipline" imposed on the dissenter in *Salzhandler* was a five-year suspension from participation in the affairs of the union, "including speaking and voting at meetings and even attending meetings" (316 F. 2d at p. 446). The case at bar is wholly dissimilar, and there is thus no conflict.

The second case cited by the Petitioner as in conflict is *United States* v. *Roganovich*, 318 F. 2d 167 (C. A. 7th 1963). That case involved a criminal prosecution under Section 530 of the Act for physically attacking and intimidating a union member to restrain him from expressing an opinion at a union meeting regarding the conduct of a union official. *Roganovich* involved an attempt to deprive a union member of the right of free speech guaranteed by Section 101 (a)(2), but its relevance to or inconsistency with the case at bar is tenuous at best. Moreover, it is a decision of the Court of Appeals for the Seventh Circuit.

A case not cited by Petitioner but referred to by the Court of Appeals below is much more in point. In *Allen* v. *Armored Car Chauffeurs & Guards, Local 820*, 185 F.

Supp. 492 (D. N. J. 1960), the court dismissed a complaint alleging the same wrong-doing as here—the union's failure to take a case to arbitration. In its opinion, the court observed at page 494 that, "[i]t is quite clear from a reading of Title 1 that its intent was to protect a Union member from the violation of his rights as against the Union only, and only as specified in Title 1."

Recognizing that the complaint was an asserted failure of the union to act against the employer under a collective bargaining agreement, the court also pointed out (185 F. Supp. 492, 494-95):

> As to plaintiff's claim that this Court has jurisdiction of this suit by virtue of Title 1, § 101 (a)(5), which covers "safe-guards against improper disciplinary action", it suffices to say that what plaintiff complains of here is not that the Union "fined, suspended, expelled, or otherwise disciplined" him, but that it simply failed to take action against his employer when he was discharged by his employer for the alleged theft of money. Clearly this cause of action does not come within the other rights set out in Section 101 of Title 1 of the Act, as alluded to in *Strauss*. . . . The disciplinary action of which this Court is given jurisdiction, as noted above, is not discharge from employment, but the discipline of a member of the Union as to his membership.

Actually, the facts in the *Allen* case gave the union member a far more rational basis for argument than do the facts alleged here. In *Allen*, the union's decision not to arbitrate the discharge was apparently made *after* the employee had been discharged and was a decision relating solely to him. On the other hand, the Amended Complaint here discloses that the decision of Local 7-515's membership was made *prior* to Petitioner's discharge and that the decision not to arbitrate the claims of members involved in excessive absenteeism was to be applied generally to *all such persons*.

CONCLUSION.

The District Court dismissed the Amended Complaint for failure to state a claim under the Labor Management Reporting and Disclosure Act. The Court of Appeals affirmed. On the basis of the foregoing discussion, these decisions appear to be thoroughly justified, and they are not in conflict with any other relevant cases.

Respondents therefore urge that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

EUGENE COTTON,
RICHARD F. WATT,
STEPHEN M. SLAVIN,
Attorneys for Respondents.

COTTON, WATT, ROCKLER & JONES,
105 West Adams Street,
Chicago, Illinois 60603.